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EX. 31-B

OFFICE OF MILITARY GOVERNMENT FOR GERMANY (U.S.)
ECONOMICS DIVISION
Decartelization Branch

18 September 1947

MEMORANDUM

TO : Mr. Phillips Hawkins

SUBJECT : Mr. Avery's Proposals for the Deconcentration of the
Henschel Combine

1. First I want to say that I think Mr. Avery has done an excellent job throughout, in the series of documents dealing with the deconcentration of the Henschel Combine which he submitted to you under date of 16 Sep 47. I am prepared to go along with Mr. Avery on the dissolution of the Industrieverwaltungen Oscar R. Henschel and the Henschel Familienverwaltung G.m.b.H. (Para 25) and on the divestiture by HAS of the assets listed a. to r. in Para 27. I am in agreement with his opposition to putting the Henschels entirely out of the business, for which as he points out we have no precedent in U.S. antitrust history. I am almost ready to go along with him when it comes to separating the three plants at Kassel. However, a number of questions arise in my mind at this point. The first is a policy question which members of the Team believe to be of paramount importance here.

2. In posing this question, I am going to make two assumptions. The first is that nothing which we ever prescribe by way of a deconcentration plan for any firm is prescribed from punitive motives; that although the results may be punitive, our motives in prescribing it are purely the antitrust, antimonopoly motives. The second assumption is that, in general, when dealing with monopoly in the strict sense (one firm producing the entire output), we may prescribe appropriate deconcentration measures regardless of the fact that there may be some impairment of technological efficiency.

3. Then, with those two factors ruled entirely out of consideration, I want to pose two alternative policy positions and seek the answer of the Branch as to which nearest represents our policy. They are as follows:

Policy Alternative No. 1

It is the policy of the Decartelization Branch, when dealing with firms operating under conditions of oligopoly (a small

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number of firms producing the entire output), that as a general rule we should deconcentrate to (but not below) the point where the Germans concerned can convince us that if we go further, technological efficiency will be seriously impaired.

Policy Alternative No. 2

It is the policy of the Decartelization Branch that when dealing with firms operating under conditions of oligopoly, we will prescribe a pattern of deconcentration which appears most effective, regardless of the fact that in so doing, technological efficiency will be seriously impaired.

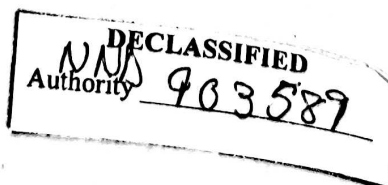
4. I believe we need the answer to this question now because every Team is now faced with it, and because if the second alternative approximates the policy of the Branch, then we do not even need to go into the question of whether or not Mr. Avery's proposal to separate the three Kassel plants will seriously impair the technological efficiency of locomotive and truck production in Germany. But, on the other hand, if the first alternative more nearly approximates the policy of the Branch, we must examine every proposal, by whomever made, in the light of whether or not technological efficiency will be seriously impaired by its adoption. (Please note that I am not taking the position here that Mr. Avery's proposal to separate the three Kassel plants would seriously impair technological efficiency, and I hope that it would not.) In a memorandum to the Teams under date of 17 Jul 47, I suggested the position represented by Policy Proposal No. 1, above, as a general guide, and I believe that the Henschel Team has tried to follow that guide in its proposals for the deconcentration of the Henschel Combine.

5. Other questions which have occurred to me in studying Mr. Avery's recommendations are as follows:

a. Would Mr. Avery's plan, Para 22.a., prohibit H&S forever from taking on a sideline to locomotive production? If so, is there precedent for such procedure in U.S. antitrust history? If not, assuming they would immediately seek such a sideline, have we gained very much by divesting them of their present sideline which is heavy trucks?

b. Assuming the Henschels elect to keep the "Kassel" plant, is it the intent of Mr. Avery's plan, Para 23.a., b. and c., to prohibit H&S forever from building its own boiler plant, on the one

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hand, and its own frame, tender and parts plant, on the other? [✓]
If so, is there precedent for such procedure in U.S. antitrust history? If not, (assuming that they would build such plants just as quickly as they could) have we gained very much by forcing them to divest themselves of the Rothenditmold plant and the Mittelfeld plant?

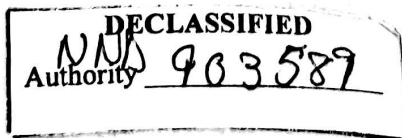
c. Mr. Avery finds the element of excessive concentration partially in the fact that H&S hold the three big Kassel factories as a unit (presumably in part because those factories account for 40% of the locomotive production of Germany). Assuming that the Henschels elect to keep the big locomotive constructing plant at Kassel, would we not still have one firm turning out 40% of the finished locomotives of Germany? Unfortunately, it appears that this is not a case where we can separate three plants and leave each with 13-1/3% (1/3 of the original total of 40%) of German locomotive production. However these plants are separated, the locomotive constructing plant at Kassel is likely to be the only one of the three ever to turn out finished locomotives.

d. In the light of c. above, there may be fundamental error in assuming that we are dealing with three different plants at Kassel. Speaking loosely, we have been referring to "the three Kassel plants," yet there is every reason to believe that the groups of buildings comprising these three so-called "plants" are in different sections of the city of Kassel purely as a result of historical accident. The history of the company indicates, what is so frequently the case in every country, that when the time comes to expand an old plant, the city has grown up around it and the firm has to put its new aggregations of buildings out at the edge of town. Had this not been the case, I believe what now appear to be three plants at Kassel, would all have been built on contiguous territory as one plant. Therefore, in proposing to force the divestiture by H&S of two of these so-called "plants", I wonder if we are not in fact forcing the splitting up of what is in the economic sense, a single plant. I am not suggesting that this should never be done, but only that when we do it, we should do it advisedly.

6. I do not mean to suggest in the preceding paragraph that we can do nothing in Germany for which we cannot find precedent in U.S. antitrust history. But I agree with Mr. Avery that we are in a more defensible position when we can point to such parallels. I have not examined here the problem of whether or not the proposal

[✓] while this is not directed in the order, it would appear logical if the economic effects of the separation are to be preserved.

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to split the "three Kassel plants" would seriously impair technological efficiency because, depending on the answer to the policy question raised in Para 3. above, that problem may or may not be of crucial importance.

7. Mr. Gaberman will be back in the office Monday if not before. As soon as he arrives we propose to get the Henschel Team together, thrash out every possible alternative and very speedily resolve the few remaining points in question. I am sure we can clear up these few points and come up with an agreed plan in short order.

CHARLES A. DILLEY
Assistant Chief of Branch
for Deconcentration

CC: Avery
Barron
Coleman
Collison
Gaberman

